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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Mineola)
Exchange and the Grand Saline)
Exchange.)

96-159
DOCKET FILE COPY ORIGINAL

PETITION

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Mineola exchange and the Grand Saline exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way;

¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

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² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be granted. The format and criteria are detailed in paragraphs 23 and 24.

3. Exchanges involved: Mineola in the Longview, TX LATA and Grand Saline in the Dallas, TX LATA;
4. Name of carriers: Mineola of Southwestern Bell Telephone and Grand Saline of Contel/GTE Southwest, Inc.;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Mineola exchange has 5,385 access lines, and the Grand Saline exchange has 2,413 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Mineola customers returning ballots who voted in favor of ELC to Grand Saline: 79.00. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. ***PRIMA FACIE* SHOWING**

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or

access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Mineola exchange and the Grand Saline exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

DOCKET NO. 13688

SHEET 1

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE RICHLAND §
 EXCHANGE TO THE EXCHANGES OF § OF TEXAS
 MEXIA AND WORTHAM §

ORDER NO. 8

DOCKET NO. 13689

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE NORDHEIM §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 KENEDY §

ORDER NO. 9

DOCKET NO. 13690

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE FENTRESS §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 LULING §

ORDER NO. 7

DOCKET NO. 13764

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALING SERVICE FROM THE MINEOLA §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 GRAND SALINE §

ORDER NO. 7

DOCKET NO. 13878

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE §
 YORKTOWN EXCHANGE TO THE § STATE OF TEXAS
 EXCHANGES OF KENEDY AND RUNGE §

ORDER NO. 6

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DOCKET NO. 13689
DOCKET NO. 13690
DOCKET NO. 13764
DOCKET NO. 13878
DOCKET NO. 13939

ORDER NO. 9
ORDER NO. 7
ORDER NO. 7
ORDER NO. 6
ORDER NO. 8

ATTACHMENT A
SHEET 2

DOCKET NO. 13939

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE	§	
STREETMAN EXCHANGE TO THE	§	OF TEXAS
EXCHANGES OF MEXIA AND WORTHAM	§	

**ORDER NO. 8
UNABATING AND DIRECTING LOCAL EXCHANGE COMPANY
TO FILE FOR LIMITED MODIFICATION**

On July 28, 1997, the Commission Staff recommended that, in light of the recent Federal Communications Commission (FCC) order addressing the procedures for Southwestern Bell Telephone Company (SWBT) to request limited modifications of local access and transport area (LATA) boundaries for the provision of expanded local calling service (ELCS), that these applications be unabated. A community of interest has previously been established in these cases and a waiver request was filed by SWBT with the Department of Justice under the *Modified Final Judgment*. Therefore, these applications are unabated.

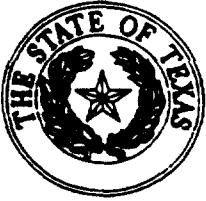
Within thirty days of the effective date of this order, SWBT shall file a request for limited modification of the LATA boundary in accordance with the procedures outlined *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, §§ 23 & 24.

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ORDER NO. 6
ORDER NO. 8

ATTACHMENT A
SHEET 3

Additionally, within 10 days of the receipt of orders or notices from the FCC relating to these petitions, SWBT shall file such orders or notices with the Commission.



ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 30th DAY OF JULY, 1997

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DOCKET NO. 13764

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
MINEOLA EXCHANGE TO THE
GRAND SALINE EXCHANGE

§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

INTERIM ORDER

On behalf of the Public Utility Commission of Texas (Commission) the Administrative Law Judge (ALJ) finds that this docket is based on a evidentiary record and has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are **ADOPTED**:

Findings of Fact

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order request non-optional "to and from calling" between the Mineola and the Grand Saline Exchange.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.
3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Case (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)
4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from

providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5. Judge Greene has considered the following factors, among others, for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and the state commission's finding of the existence of a community of interest between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon)(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative vote of the responding subscribers and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services.

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. Under Texas law, the mandated percentage of affirmative votes from those subscribers returning ballots constitutes a compelling showing of a community of interest. This factor is considered along with other factors, such as the sharing of local government, schools, employment, and commercial centers.

10. On July 12, 1994, the Mineola Exchange filed a petition for ELCS between it and various exchanges, including the Grand Saline Exchange. The petition involving interLATA issues ultimately became Docket No. 13764.

11. The Mineola Exchange is served by SWB, and it is in the Longview LATA. The Grand Saline Exchange is served by GTE, and it is in the Dallas LATA.

12. The parties to the proceeding are the petitioning Mineola Exchange, the City of Mineola, SWB, GTE, MCI Telecommunications Corporation (MCI), and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

13. The Mineola Exchange is contiguous with the Grand Saline Exchange.

14. The petition filed at the Commission included the signatures of over 404 subscribers in the Mineola Exchange. An affirmative vote of 79 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Mineola Exchange to the Grand Saline Exchange.

15. Mineola has a population of 4321 people and 4639 access lines. It is approximately 12 miles west of Grand Saline.

16. Grand Saline is one of the closest commercial centers to Mineola. Like most small communities, Mineola does not provide all the goods and services that its residents need. It is often necessary to shop in surrounding communities, particularly Grand Saline, to satisfy these needs. Also, Grand Saline residents often come to Mineola. These two communities are dependent on each other to the benefit of both communities. The benefit would be greatly enhanced with ELCS. The elderly would particularly benefit, because they are the least likely to travel extended distances to shop. Mineola's elderly are a significant portion of Mineola's total population. The ability to determine that a product is available at a particular location without incurring long distance charges would benefit the consumer and the merchants.

17. The Cozby-Germany Hospital is located in Grand Saline and provides full service health care and emergency care to the residents of the Mineola Exchange. No hospital or emergency services are located in Mineola.

18. The Grand Saline Exchange represents a commercial center for those who live in the Mineola Exchange. Because doctors, lawyers, and accountants have an abundance of clients/patients in the area, access to professional services in the surrounding communities, such as Grand Saline, is essential to meet the needs of Mineola's citizens.

19. Business or governmental agencies located in the Grand Saline Exchange employ many of the working population of the Mineola Exchange. One of the largest industries and employers in the area is the Morton Salt Plant in Grand Saline. Mineola residents work at this plant. Also, Mineola Federal Savings has a branch office in Grand Saline.

20. In a number of instances Mineola churches provide for the spiritual needs of Grand Saline residents. Mineola has the nearest Catholic, Episcopal, Jehovah's Witness, Seventh-Day Adventist and Christian congregations.

21. There is a community of interest between the Mineola Exchange and the Grand Saline Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Grand Saline Exchange in the following ways: affirmative vote of 79 percent of the subscribers returning ballots; common utilization as a commercial center and employment center; common reliance upon religious affiliations; and common reliance upon hospital and medical providers.

22. No issues of law or fact are disputed by any party.

23. No hearing on the merits or Commission action is necessary and administrative review is warranted.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.
2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).
3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 13, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. In an ELCS docket, the fact that two exchanges are within 22 miles of each other or which are contiguous constitutes a *per se* showing of community of interest. Judge Greene, however, considers other factors showing of community of interest in deciding whether to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.

8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
11. All requirements for administrative review under P.U.C. PROC. R. 22.32(a) have been satisfied; therefore, the proposed petition may be approved by a Hearings Officer under the administrative review provisions of P.U.C. PROC. R. 22.32 as authorized by § 1.101(d) of PURA.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. The petitioners in the petition filed by the Mineola Exchange for expanded local calling service to the Grand Saline Exchange have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment before Judge Harold H. Greene.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, GTE and SWB are **DIRECTED** to file Judge Greene's judgment in this docket.

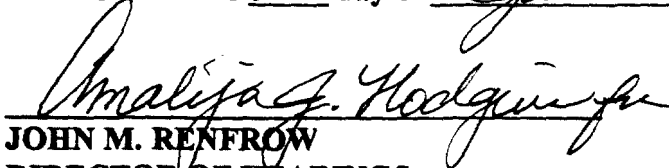
4. This Interim Order is effective July 5, 1995.

Respectfully submitted,



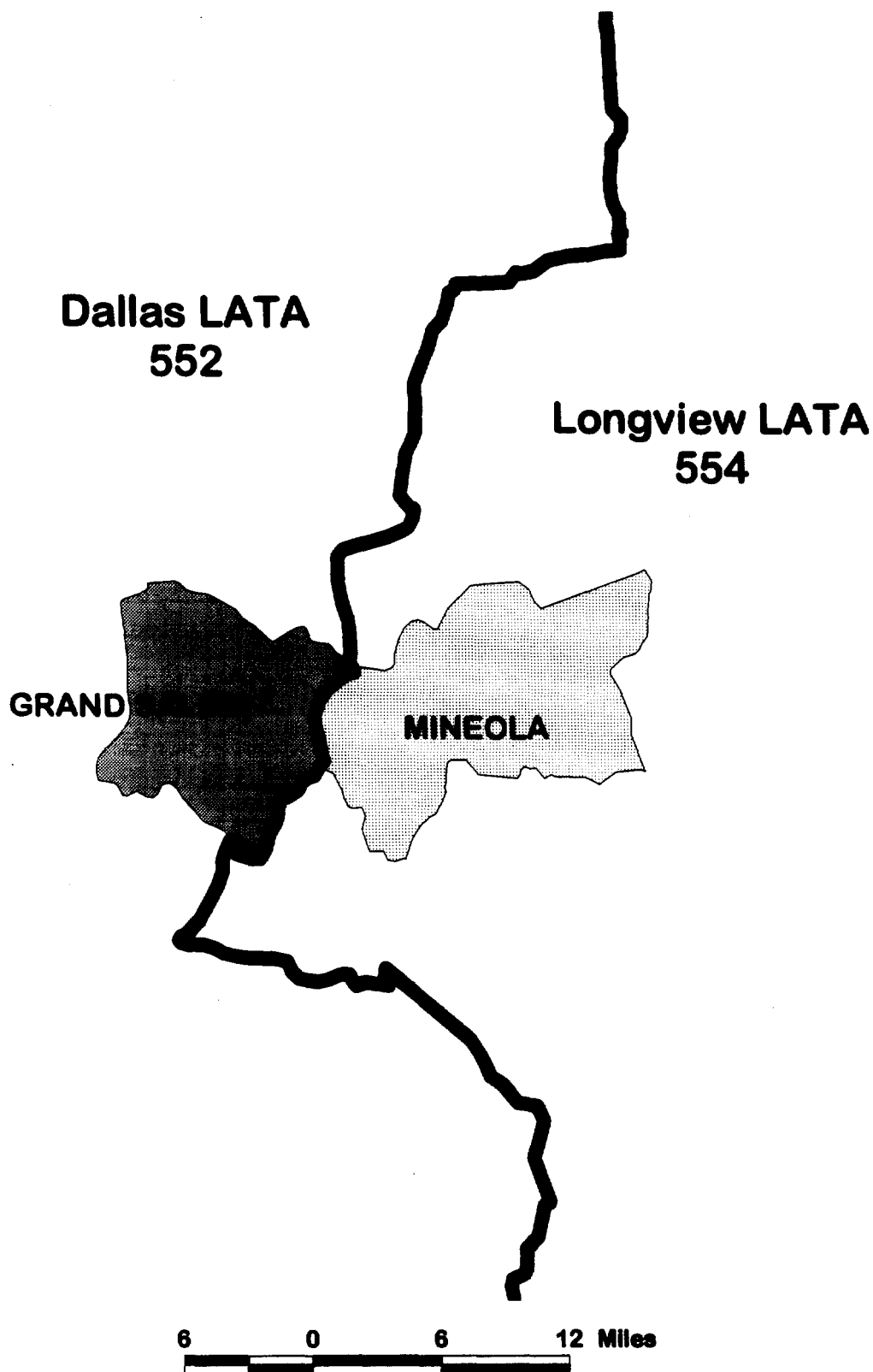
DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

APPROVED this 14th day of June 1995.



JOHN M. RENFROW
DIRECTOR OF HEARINGS

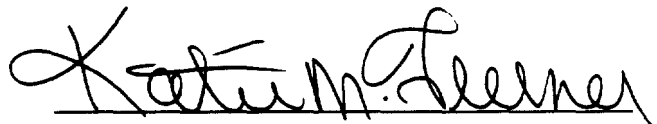
Mineola To Grand Saline



 GTE Southwest Inc. Exchange
 Southwestern Bell Telephone Exchange

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", is written over a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
1701 North Congress
Austin, Texas 78701